

REMARKS

Applicants respectfully request favorable reconsideration of this application.

Claims 1-32 have been previously cancelled and Claims 41, and 59-76 have been previously withdrawn from consideration. Independent Claims 33 and 77 have been amended to further clarify the distinction between the claimed prosthesis and the disclosures of the applied reference. These amendments are fully supported by the specification as filed, e.g., in paragraph [0110], at page 40, line 23 - page 21, line 1, and paragraph [0140], and in the drawings, e.g. Fig. 16. Corresponding amendments have been made to dependent Claims 38 and 82. Accordingly, Claims 33-40, 42-58, and 77-87 are active in the application. All claims active in the application read on the elected species.

The specification has been amended to correct an evident error.

In the final rejection mailed June 02, 2006, maintained in the Advisory Action mailed September 28, 2006, Claims 33-35, 38-39, 42-44, 46, 50-51, and 57-58 were rejected under 35 U.S.C. § 102(e) as being anticipated by Huang, U.S. Patent No. 6,893,465 (Huang). Claims 36-37, 40, 45, 47-49,

and 53-56, were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Huang reference. Claims 77-87, added and entered by amendment after the final rejection were also indicated as rejected in the Advisory Action. The rejection of Claim 50 in the final rejection under 35 U.S.C. § 112, second paragraph, which is believed to have been corrected by the amendment entered after the final rejection, was not mentioned in the Advisory Action.

Reconsideration of the rejections is respectfully requested.

As to the rejection of Claims 33-35, 38-39, 42-44, 46, 50-51, and 57-58 under 35 U.S.C. § 102(e), in the final rejection, and as extended in the Advisory Action to Claims 77-87, Applicants have the following remarks. Although Applicants respectfully disagree with the Office's construction of the disclosures of the Huang reference, independent Claims 33 and 77, have been amended to further distinguish the claimed inventions from the Huang disclosures by reciting that the central cavity in the annulus extends axially completely therethrough, and that the upper and lower transitional plates are made of a second biocompatible polymer material.

Inasmuch as the Huang reference does not disclose, teach, or suggest an intervertebral prosthesis including

either an annulus with a central cavity extending completely therethrough or transitional endplates made of a biocompatible polymer material, independent Claims 33 and 77, as amended, are clearly patentable over the disclosures of the Huang reference.

Accordingly, Claims 33-40, 42-58, and 77-87, all the claims active in the application, are allowable, and a favorable action on these claims is respectfully requested.

Inasmuch as the rejection, in the final Office Action, of Claim 50 under 35 U.S.C. 112, second paragraph, is not repeated in the Advisory Action, Applicants assume that the amendment entered after the final rejection has removed the basis for this rejection.

In view of the above amendments and discussion, this application is believed to be in condition for allowance, and an early Notice of Allowance is respectfully requested.

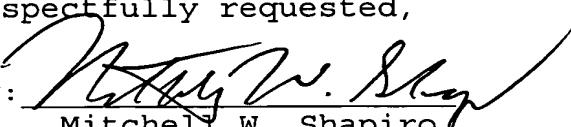
Furthermore, in view of the allowability of Claims 33 and 77, allowable claims generic to the non-elected species are present in the application. Accordingly, rejoinder of withdrawn Claims 41 and 59-76 is appropriate, and such rejoinder and allowance of those claims is respectfully requested.

The Commissioner is hereby authorized to charge to Deposit Account No. 50-1165 any fees under 37 C.F.R. §§ 1.16

and 1.17 that may be required by this paper and to credit any overpayment to that Account. If any extension of time is required in connection with the filing of this paper and has not been requested separately, such extension is hereby requested.

Respectfully requested,

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